

**IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS**

2<sup>nd</sup> Appeal No.S-15 of 2024

*Before:*

Dr. Syed Fiaz ul Hasan Shah.

Appellant: Muhammad Haneef s/o Lal Khan Brohi

Since his death through is L.Rs.

1. Barkat Ali s/o late Muhammad Hanif.
  2. Asif Ali s/o Late Muhammad Hanif.
  3. Hakim Ali s/o late Muhammad Hanif.
  4. Israr Ali s/o late Muhammad Hanif  
(minor) to be presented through  
her mother/ Sr.No.12.
  5. Zulekhan d/o Late Muhammad Hanif.
  6. Khair un Nisa d/o Late Muhammad Hanif.
  7. Nasreen d/o Late Muhammad Hanif.
  8. Noor un Nisa d/o Late Muhammad Hanif.
  9. Gul Nisa d/o Late Muhammad Hanif.
  10. Shabnam d/o Late Muhammad Hanif.
  11. Naseeban d/o Late Muhammad Hanif.
  12. Mst. Lal Bibi wd/o Late Muhammad Hanif.
  13. Liaquat Ali s/o Late Muhammad Hanif.
- Through Mr. Vijesh Meghwar advocate junior  
partner of Mr. Kanji Mal Meghwar advocate.

Respondents: 1. Mst. Marvi d/o Qutubuddin.

2. Ghulam Sarwar s/o Raees Haji Kamaluddin.
3. Niaz s/o Haneef.

Through Mr. Dilip J. Mulani advocate

4. Mukhtiarkar Land Revenue Sanghar.
5. Tapedar Deh Sadrat Taluka Sanghar.
6. SHO P.S Mangli.

7. Province of Sindh through Secretary  
Land Revenue Department,  
Government of Sindh Karachi.
8. Sub Registrar Sanghar.
9. Micro Film Registrar Hyderabad.  
Through Mr. Muhammad Sharif Solangi,  
Additional Advocate General.

Date of hearing: 19-03-2025.

Date of Judgment: 13-05-2025.

## **J U D G M E N T**

**Dr. Syed Fiaz ul Hasan Shah, J:** The appellant/ plaintiff (hereinafter referred as the “appellant”) being dis-satisfied with the judgment and decree dated 26-11-2014 passed by learned 2<sup>nd</sup> Additional District Judge, Sanghar, in Civil Appeal No.04/2013 whereby judgment and decree dated 19-12-2012 passed by learned Senior Civil Judge, Sanghar, in F.C.Suit No.45/2007 vide which the suit of the appellant was decreed, was set aside and suit was dismissed, has preferred instant Appeal.

2. The facts giving rise to instant Appeal are that appellant filed suit for cancellation of sale deed, declaration and permanent injunction stating therein that agricultural land bearing temporary block Nos. 59, 60, 61, 62 total area 64-00 acres situated in Deh Sadrat, Taluka & District Sanghar (hereinafter referred as “suit land”). The suit land is un-assessed land and was originally owned by one Muhammad Shabbir, which was purchased by the appellant in year 1988 in the sum of Rs.130,000/-, later such entry in record of rights was also effected in his name vide Jaryan No.193. Since

purchase, the appellant is in physical and cultivating possession of the suit land and is also residing there by constructing his house over some portion of the suit land. He is regularly paying land revenue etc to the Government without any hindrance. The respondent No.3/ defendant is very clever person having greedy eyes over the suit land, always tried to dispossess the appellant from the suit land without any cogent reason and without due course of law by using illegal methods. About 20 days ago, respondent No.3 alongwith respondents No.5 and 6 and subordinates of respondent No.6 appeared on suit land, threatened the respondent No.1 to handover the possession of suit land, claiming to be the owner of it and denying the character and title of the appellant over the suit land. The appellant told him that he is legal owner of suit land which was purchased by him from one Muhammad Shabbir and such entry in record of rights is also effected in his name, but the respondent No.3 did not hear the appellant and went away by issuing threats that he with the help of respondent No.5 will keep his name in the record of rights and thereafter will come again and dispossess the appellant from the suit land. It is further averred that he then approached the respondent No.4 and after verification of the khata which was not changed by respondent No.3, requested the respondent No.4 that respondent No. 3, malafidely denying the legal character and title over the suit land and showing himself owner of the suit land and with the help of Tapedar and police, illegally, malafidely wants to occupy the suit land. The Appellant further requested the respondent No.4 to direct / restrain the Tapedar of Deh Sadrat not to interfere in peaceful possession of the appellant over suit land

but the respondent No.4 at the influence of respondent No.3 did not hear him and shown his inability. It is asserted in the contents of plaint that again about 2/3 days back when appellant was present on his land where respondent No.3 alongwith 8/10 unknown persons duly armed with deadly weapons appeared on suit land and malafidely by making fire in the air tried to dispossess the appellant from the suit land but due to intervention of appellant and other local persons the respondent No.3 could not succeed and went away by issuing threats that they will come again and dispossess the appellant from the suit land. It is further averred that action of respondent No.3 for dispossessing the appellant from the suit land with the help of respondents No.5 and 6 by denying the character and title of the appellant over the suit land showing himself owner, is illegal, malafide, void ab-initio and is not binding upon him.

3. Hence, the appellant apprehending his forcible dispossession and blood shed, filed the present suit. It is further asserted that during pendency of the suit, the respondents No.1 and 2/ defendants moved an application under Order I R.10 C.P.C. requesting therein to join them as party in the suit, claiming themselves to be the purchasers of suit land on the basis of general power of attorney of Muhammad Hanif s/o Ranjha Khan, accordingly they were made party in the suit and amended plaint was filed. It is asserted that Muhammad Shabbir the previous owner of the suit land had filed a suit bearing F.C. Suit No.83/1985 Re: Muhammad Shabbir Vs. Nasir Hayat and others, in that suit so called general power of attorney namely Muhammad Hanif s/o Ranjha Khan was also defendant No.7, ultimately a private settlement (*Faisla*) in between

Muhammad Hanif s/o Ranjha Khan and others (who are shown to be the sellers of the suit land to the respondents No.1 and 2) was taken place in which the suit land was proved and written in the *Faisla* to be the property of Muhammad Shabbir, such *Punchaiti Faisla* was submitted in that suit before the Court and the suit was disposed of in the year 1987. Thereafter, the appellant purchased the suit land from Muhammad Shabbir but the respondents No.1 and 2 malafidely in collusion with Sub-Registrar, Sanghar, on the basis of forged Photostat copy of power of attorney managed and fabricated the sale deed produced by the respondents No.1 and 2 which is based on false footing, void, illegal and is liable to be cancelled. The respondents No.1 and 2 even tried to get their entries effected in the record of rights in their names secretly and by hiding from the appellant in collusion with respondent No.4 but ultimately same were cancelled by District Officer Revenue and thereafter by respondents No.4 and 5 being false and were taken place due to mistake. It is further averred that the action of respondent No.3 is illegal and so called registered sale deed serial No.425 dated 12-4-2007 in the names of respondents No.1 and 2 is false, fabricated and liable to be cancelled.

4. The appellant prayed for judgment and decree as under:

a) That defendants No.6 & 7 be directed to produce before the Honorable Court the original sale deed mentioned at S.No.425, dated 12-4-2007, in respect of the suit land comprising of block Nos.59, 60, 61, 62 total area 64-00 acres of Deh Sadrat, Taluka and District Sanghar, presented in the office of defendant No.8 and may be

ordered to be cancelled with the direction to defendant No.8 to do so.

**b)** That this Honorable Court may be pleased to declare that the plaintiff is lawful and legal owner of the suit land i.e. temporary block Nos.59, 60 area 32-00 acres and 61, 62 area 32-00 acres, total area 64-00 acres of the Deh Sadrat, Taluka and District Sanghar, which was purchased by the plaintiff in the sum of Rs.130,000/= from one Muhammad Shabbir, this Honorable Court further may be pleased to declare that act of defendant No.1, denying the title and legal character of plaintiff over the suit land and claiming himself as owner of suit land is illegal, malafide, void abinitio and is not binding upon plaintiff.

**c)** That this Honorable Court may be pleased to issue permanent injunction restraining the defendants for interfering in peaceful cultivating and physical possession of the suit land i.e. temporary block Nos. 59, 60 area 32-00 acres and 61, 62 area 32-00 acres, total area 64.00 acres of the Deh Sadrat, Taluka and District Sanghar, through themselves, their agents, associates, servants, helpers, friends, attorneys in any manner whatsoever.

**d)** That, costs of the suit be borne by the defendants.

**e)** Any other relief, which this Honorable Court deems fit and proper may be awarded to plaintiff.

- 5.** After service the respondent No.3 and so also Respondents No.1 and 2 have filed their written statements respectively whereas official respondents were declared ex-parte. The respondent No.3

in his written statement had denied the claim of the appellant and stated that the suit land was not owned by Muhammad Bashir, in fact originally the suit land was allotted to Major Muhammad Hayat son of Fateh Sher by the Barrage department alongwith other land vide Form-A issued in or about year 1981 under Fauji Scheme. The suit land was assigned temporary block No. 59, 60, 61 & 62 in Form-A in the year 1981. He denied the plea of appellant that the suit land is un-assessed. He further asserted that the appellant has not pleaded full facts and has concealed the true facts. The documents produced by the appellant with the plaint also prove that the suit land is originally owned by Major Muhammad Hayat. Fouti Khata Badal of Major Muhammad Hayat has been affected on 12-4-2007 in the names of his legal heirs, and these legal heirs have sold out the suit land to Respondents No.1 and 2, through their attorney vide registered sale deed. Had the suit land been sold or owned by the appellant, the respondents No.4 and 5 would never had effected Fouti Khata Badal in the names of legal heirs of Major Muhammad Hayat and would never had issued Intikhab and sale certificate to them. The documents of the appellant are false and managed. The documents so produced by the appellant reads that the suit land was sold by Major Muhammad Hayat to one Muhammad Shabbir (not Muhammad Bashir), on 21-8-1973 and out of total sale consideration of Rs.52,000/=, Rs.18,000/= only as token money are shown to have been paid to the owner so this alleged sale statement does not qualify and complete the sale and also the sale of land in the year 1973 which was allotted in the year 1981 i.e. prior to allotment is meaningless, illegal and void and appears to be forged and managed. He further stated that the

entry in Deh Form in record of rights in the name of Muhammad Shabbir in the year 1973 is also false. No NOC for sale of suit land by Major Muhammad Hayat to Muhammad Shabbir is produced, resultantly the purchase of suit land by the appellant from Muhammad Shabbir, if any, is illegal, unlawful, malafide, null and void and is of no legal effect and is inoperative upon the rights of the lawful purchaser. He has taken additional pleas, that the suit is hopelessly time barred, suit is cause-less, improperly valued, so also suit is bad for misjoinder and non-joinder of the parties, the appellant has malafidely not judged actual owners of the suit land with bad intention and is deceiving and committing fraud, hence the suit is liable to be dismissed.

6. The Respondents No.1 and 2 in their written statement and amended written statement, have denied the plea of the appellant stating therein that the suit land was not originally owned by Muhammad Shabbir, in fact originally the suit land was allotted to Major Muhammad Hayat son of Fateh Sher by the Barrage department alongwith other land vide Form-A issued in or about year 1981 under Fauji Scheme. The suit land was assigned temporary block No.59, 60, 61 and 62 in Form-A in the year 1981. The documents produced by the appellant alongwith plaint also prove that the suit land is originally owned by Major Muhammad Hayat. Fouti Khata Badal of Major Muhammad Hayat has been effected on 12-4-2007 in the names of his legal heirs who then sold out the suit land to the Respondents No.1 and 2 through their attorney in the sum of Rs.40,00,000/- (rupees forty lacs) vide registered sale deed No.425 dated 12-4-2007. The Respondents No.1 and 2 further stated that had the suit land been sold or owned



by the appellant, the respondents No.4 and 5 would never had effected Fouti Khata Badal in the names of legal heirs of Major Muhammad Hayat and would never had issued Intikhab and sale certificate to them. The documents of the appellant are false and managed. The documents so produced by the appellant reads that the suit land was sold out by Major Muhammad Hayat to one Muhammad Shabbir on 21-8-1973 and out of total sale consideration of Rs.52,000/-, Rs.18,000/- only as token money are shown to have been paid to the owner so this alleged sale statement does not qualify and complete the sale transaction and also the sale of suit land in the year 1973 which was allotted in the year 1981 i.e. prior to allotment is meaningless, illegal, void and appears to be forged and managed. They further stated that the entry in Deh Form in record of rights in the name of Muhammad Shabbir in the year 1973 is also false. No NOC for sale or Intikhab certificate has been produced of the suit land by Major Muhammad Hayat to Muhammad Shabbir the alleged purchaser of the suit land by the appellant from Shabbir apparently is illegal, unlawful, malafide, null, void and fake and is of no legal effect and is not operative upon the lawful purchasers viz Respondents No.1 and 2 who are in legal and cultivating possession of the suit land. The Respondents No.1 and 2 further stated in their written statement that the khata of suit land (Jaryan No.193) in the name of the appellant produced by the appellant is not verified by any revenue officer. It also does not disclose that who had wrote the khata signed shown at Jaryan No.193. In the eyes of law, the khata which is not verified, is no khata, it is worthless. Furthermore, the appellant is resident of Nawabshah. They further stated that they

are legal owners of the suit land, the appellant in order to usurp the suit land by hooks and crooks have started creating hurdles in the registration of sale deed through his influence and had also succeeded to get prepared false, fake, fabricated and fraudulent documents in his favour as stated above. They further stated that appellant has knowledge about the purchase of suit land by Respondents No.1 and 2, but purposely, deliberately with ulterior motive, he did not make them (respondents No.1 and 2) as party in the suit (first plaint) as he wanted his suit decreed without contesting by the real proper and necessary parties. They further stated that filing of F.C. Suit No.83/1985 and so called faisla also appears game of fraud by appellant in view of the facts as stated above. When Muhammad Shabbir was not real owner of the suit land how he could sale the suit land to the appellant. Neither the same was sold by Muhammad Shabbir to the appellant by registered sale deed nor the alleged khata of the appellant is verified documents accordingly the appellant has neither got title of the suit land nor he has got character right. It is further stated that the appellant tried to stop the registered sale deed from its registration on false and fake grounds, but subsequently Mukhtiarkar Revenue Sanghar by his intimation dated 25-8-2007 to the Sub-Registrar, Sanghar after his probe enquiry in the matter, and also acknowledged about the facts and findings, mentioned that the sale certificate No.81 dated 12-4-2007 issued in the name of Akram Hayat son of Muhammad Hayat and others of 64-00 acres of Deh Sadrat, Taluka Sanghar may be treated as restored/intact. Thereafter, at the instance of the appellant the Sub-Registrar Sanghar on the bottom of the said sale deed in

favour of the Respondents No.1 and 2 has put his note that till receipt of new identity card of Muhammad Haneef the document of sale deed is postponed, such note is not warranted to the law but to please the appellant, the Sub-Registrar noted in this manner. The Respondents No.1 and 2 have taken additional pleas, that the suit is barred by law, suit is cause-less, improperly valued, so also suit is bad for misjoinder and non-joinder of the parties, the appellant has malafidely had not judged actual owners of the suit land with malafide intention to get decree by committing fraud, the appellants when came to know about filing of the present suit with ulterior motive, in respect of the suit property, filed an application under Order I Rule 10 C.P.C for joining them in this suit which was allowed, hence they have filed written statement. Lastly they pleaded that the appellant is not entitled to any relief prayed for, the suit of plaintiff is liable to be dismissed.

- 7.** From the pleadings of both parties following issues were framed:
- I. Whether plaintiff did not purchase the suit land from the previous owner Muhammad Shabbir in the year 1988 and whether the same has not been entered in Deh Form No. VII record of rights?
  - II. Whether Muhammad Hayat in his life time had sold out the suit land to Muhammad Shabbir.
  - III. Whether registered sale deed bearing serial No.425 dated 12-4-2007 in respect of suit land and subsequent entries in record of rights thereof in favour of defendants No.6 & 7 are false one and liable to be cancelled?
  - IV. Whether plaintiff is in possession of suit land since its purchase?

- V. Whether defendants No.6 & 7 managed false photo copy of power of attorney with collusion of defendants No.2 & 3?
- VI. Whether plaintiff not legal and valid owner of the suit land?
- VII. Whether suit is not maintainable in law?
- VIII. Whether suit of the plaintiff is barred by law?
- IX. Whether plaintiff is not entitled to the relief claimed?
- X. What should the decree be?

8. To prove the above issues, appellant Muhammad Haneef got examined himself as PW-1 at Ex.107 had who produced three true copies of Revenue Entry No.193 at Ex.108, 109, 110, true copy of revenue entry No.1328/96, at Ex.111, letter dated 12-5-2000 of M.F.R.O Hyderabad at Ex.112, true copies of revenue entries No.96 and 3568 at Ex.113, 114 & 115 respectively. He also produced 13 Dhal receipts at Ex.116 to 128, five Abyana receipts at Ex.129 to 133, two Zakat receipts at Ex.134 & 135, Pass Book at Ex.136, Demand note & Electricity Bills at Ex.137 to 140. He also produced true copies of plaint of F.C. Suit No.83/85 with application U/O 23 R.1 CPC & order on it, at Ex.141 & 142, copy of preliminary Misc: Application No.07/07 u/s 22-A(6) Cr.P.C, with police report at Ex.143 & 144. The appellant in support of his case had examined PW-2 Khan Zaman at Ex.145, PW-3 Qalandar Bux at Ex.146, PW-4 Muneer Ahmed Jat Tapedar at Ex.151 who had produced revenue Entry No.266 dated 16-4-1964 at Ex.152, entry No.96 of Deh Form IX at Ex.153, entry No.1328/96 at Ex.154, entry No.3562 at Ex.155, entry No.3568 dated 12-4-2007 at Ex.156 and entry No.93 at Ex.157. PW-5 Dost Muhammad Junior Clerk of Sub-Registrar Sanghar was examined at Ex.158 who

produced sale deed serial No.425 dated 12-4-2007 at Ex.159. PW-6 Muhammad Asif Misrani, Record Clerk of this Court was examined at Ex.172 who produced plaint, application U/O 23 R.1 CPC and order thereon dated 10-5-87 of F.C. Suit No.83/1985 at Ex.173 & 174. Thereafter, side of plaintiff was closed vide order on Order Sheet dated 22-9-2010.

9. In rebuttal, the Respondents No.1 and 2 got examined DW-1 Zulfiqar Ali I/C Sub-Registrar, Sanghar at Ex.189 who produced original letter No.SC/11488 of 2007 dated 25-8-2007 issued by the Mukhtiarkar Revenue Sanghar to the Sub-Registrar, at Ex/190, original sale certificate at Ex.191, original sale deed bearing serial No.425 at Ex.192. DW-2 Muhammad Aslam Mukhtiarkar Estate Sanghar was examined at Ex.193 who produced original A-Form No.NMCO/1611 at Ex.194. Respondent No.2 Ghulam Sarwar got examined himself as DW-3 at Ex.201, DW-4 Kamaludin Shar at Ex.206 who produced documents at Ex.207 to 211, DW-5 Abdullah Sirewal, ASI Anticorruption was examined at Ex.214 who produced authority letter at Ex.215, FIR bearing Crime No.5/2009 of ACE Sanghar at Ex.216, attested copy of interim challan at Ex.217, attesting copy of forwarding letter dated 21-12-2002 at Ex.218. then counsel for the respondents no.1 and 2 closed the side of evidence vide statement at Ex.219.
10. Thereafter, the trial court decreed the suit of the Appellant. The Respondents No.1 and 2 preferred appeal against said Judgment and decree, which was allowed and impugned judgment and decree of trial court was set aside and suit of the appellant was dismissed; hence this Second Appeal.
11. The appeal involved the following substantive questions of law:

- I. Whether the Appellate Court has erred in passing impugned Judgment?
- II. Whether Courts below have not decided the necessary question?
- III. Whether the Appellate Court has wrongly applied law in mis- construed documents?
- IV. Whether the Judgment is not contrary to law and compromise decree passed in previous Suit No.83 of 1985 between the parties?

**12.** The Trial Court vide Judgment dated 19.12.2019 passed the Decree in favor of the Appellant while the Appellate Court reversed the Decree and dismissed the suit of the Appellant/Plaintiff through the Judgment dated 26.11.2014 which is impugned before me.

**13.** The Appellant/Plaintiff in order to prove ownership over the property in question has produced record which shows that he is the owner of suit property by virtue of Transfer of property duly affected in the record of rights vide Revenue Entry No.1328/96 dated 02.03.1988 (Exh.111). The said record of rights was re-write by the Board of Revenue, Government of Sindh as a routine practice after every 30 years and the name of the Appellant/Plaintiff has also recorded in new Revenue Entry No.193 dated 16.05.2005 (Exh.108, 109 & 110). These Revenue documents state that the suit property stand transferred in favor of Appellant/Plaintiff by way of oral statement from Mohammad Shabir. To proof the ownership of predecessor-in-interest of the Appellant/plaintiff and to demonstrate the chain of title documents, the Appellant has produced Revenue Entry No.96 dated 21.08.1973 (Exh.113) which states that suit property stand transferred in favor of the predecessor-in-interest of the Appellant

namely Mohammad Shabbir from one Muhammad Hayat son of Fateh Mohammad.

14. Exh.112 is letter dated 12.05.2000 issued by the Commanding Officer Major Mohammad Razzak wherein No Objection for loan of ADBP in respect of suit property under a scheme vide circular dated 21.05.1983. This document remained unchallenged and no question was put by the Respondents during cross-examination of Appellant/Plaintiff. It is settled law that a party have not disputed the document or have failed to controvert to the witness during cross examination, it would deem that the same has been admitted by such party.
15. The Appellant/ Plaintiff has also produced corroborative evidence of documents which includes Dhal (Revenue) receipts, paid up bill of Electricity usage at suit land vide Exh. 116 to Exh.140. These documents established that the Appellant/Plaintiff is in exclusive possession of the property in question so also confirmed by the Tapedar of Beat who appeared as Court witness at the request of the Appellant.
16. The Exh.210 is General Power of attorney executed in 1985 by the legal heirs of original Allottee Muhammad Hayat in favor of Respondent No.3 Mohammad Haneef son of Ranjha Khan and Exh.211 is verification of Sub-Registrar Khushab about the said Power of Attorney.
17. The PW-05 Mohammad Asif, Record Keeper, in the Court of Senior Civil Judge Sanghar summoned who produced Exh. 173 & 174 pleading of Suit No.83/1985 and Order dated 10.05.1987. This judicial record clearly proved the fact that the Appellant/Plaintiff's predecessor in interest Mohammad Shabbir and Attorney of legal

heirs now the Respondent No.3 entered into Compromise before the Court in respect of suit land. Exh.141 is plaint in Suit No.83 /1985 filed by the predecessor-in-interest of the Appellant/Plaintiff namely Mohammad Shabir against the legal heirs of Muhammad Hayat (Allottee of land) and the registered Attorney who is Respondent No.3 before me. Exh.142 is the Compromise Application and Order dated 10.05.1987 by the learned Senior Civil Judge Sanghar and recorded Compromise Decree.

**18.** The contents of said Application of compromise (although the heading is written as Order XXIII Rule 1 CPC but the contents reveals it has disposed of under Order XXIII Rule 3 CPC) are reproduced hereunder:

1. That, the defendants admit the claim of the plaintiff to the extent of two blocks hearing No.45 & 46 deh Smathri-1, and the plaintiff agrees to pay sum of Rs.25000/- to the attorney of the defendant No.1 to 6 as consideration thereof.
2. That, the plaintiff foregoes his claim in respect of the remaining B. Nos.-----
3. That, the defendant No.1 to 6 and the plaintiff admit the claim of defendant No.7 Muhammad Hanif to the extent of B.No.23,24,25 of Deh Smathri.
4. That the plaintiff will hand over Rs.25000/- and the possession of B.No. 23,24,25 to Mr. Pir Bux son of Bachal khaskhali the Chairman of Union Council Shah Sikandarabad on 30-05-1987.
5. That, after the handing over of the said amount and land the defendants attorney Muhammad Hanif will execute absolute sale deed of B.No.45 and 46, Deh Smathri in favour of plaintiff and got it registered from Sub-Registrar, Sanghar within a period of seven days unless it is extended by the counsel of parties.



6. That, at the time of completion of the execution and registration of above said sale deed the attorney of the defendants will get Rs.25000/- and possession of B.No.23,24,25 from the above said Chairman Pir Bux.

### ORDER

The parties in person are present their advocates are also present and they have identified the parties. The contents of the application were read over and explained in urdu to the parties which they have accepted the the parties also admit their signatures and L.T.I. on this application.

Accordingly, the suit is decreed in terms of compromise. Compromise decree accordingly.

Sd/- Senior Civil Judge  
Sanghar

- 19.** The evidence of Official Witness PW-4 Muneer Ahmed, who is the Tepdar and custodian of Record of the land is very important. His evidence is firm, trustworthy and unequivocal. The Exh.152 produced by Official witness is official record of Revenue Entry No.266 dated 16.04.1964 which has established that the land in question was allotted or transferred from Government to Muhammad Hayat son of Fateh Mohammad. The relevant portion of evidence is re-produced hereunder:

“I have been summoned by this Court to produce record and given evidence. I produced Entry No.266 from Old record from Form No.VII Deh Sadrat which show date of Entry 16.04.1964, original owner/transferee Government to Muhammad Hayat s/o Fateh Mohammad full rupee from S. No. un-surveyed S. No.1 from it area 129.10 Acres and from 166 areas 22-00 Acres total area 151.10 Acres as

Exh.152. I produced Entry No.96 from Form No.XV Deh Sadrat Tapo Jakhro in the name of Muhammad Hayat Fateh Muhammad full rupee Army Nos.16.59, 16.60, 16.61, 16.62 area 64-00 acres total which have been mutated on 18.08.1973 in the name of Muhammad Shabbir s/o Raj Khan in column No.12, it is mentioned Army Nos.59,60,61,&61, whereas on column No.12 it is mentioned purchaser purchased in Rs.52,000/- as per verified statement in column 14 verified dated 21.08.1973 under these endorsements there is further notes in different column as pass book issued with No.28739208 dated 12.10.1085 verified 21.08.1973 under the name of Muhammad Shabbir....”

I also produced Entry No.3568 as Exh.156 mutated from Muhammad Hayat in the name of his legal heirs N.B. Akram Hayat & others under this Entry there are two notes one is in red ink dated 26.04.2007 and another without date. As per red note the land S. No.59,60,61 & 62 have been cancelled from the name of Major Muhammad Hayat s/o Fateh Sher. Thereafter, there is entry made in Muhammad Hayat sold out the land to Muhammad Shabbir s/o Raj Mohammad which was later on sold out to Mohammad Hanif and thereafter Entry No.3562 and 3567 in the name of Muhammad Hayat was cancelled. ....Since 1988 till today entry in the name of Muhammad Hanif is not changed or cancelled and intact till today. As per our record Mst. Marvi and Ghulam Sarwar have no concerned with the suit land.....”

20. During cross examination he admitted that:

**“it is correct that Entry No.261 of A-Form VII old was kept by the Order of Deputy Commissioner, Sanghar vide his Office letter No.1717 dated 09.3.1963.**

21. Both the Courts below have erroneously ignored this material piece of evidence and has not discussed it in their Judgment which is direct relevant with the question of law about the violation of Section 19 of the Colonization Act, 1912 is committed by the Appellant or otherwise.
22. The Courts below have also not given findings on the important point of application of compromise decree recorded by and between the predecessor in interest namely Mohammad Shabbir and Respondents legal heirs of grantee Major Mohammad Hayat.
23. On the other, the Respondents No.3 is the registered attorney of the legal heirs of Muhammad Hayat the original allottee of land in question while the Respondents No.1 and 2 are the purchaser of land from Respondent No.3. The case of Respondents No.1 and 2 is based on Sale Deed Serial No.425 dated 12.04.2007 executed by the Respondent No.3 as Attorney of legal heirs of Allottee Muhammad Hayat on the basis of Mutation by way of inheritance. The Exh.114 is V-Form-VII bearing Entry No.3568 dated 12.04.2007 wherein the suit property was mutated by way of inheritance in favor of legal heirs of Muhammad Hayat son of Fateh Mohammad. However, a note of cancellation has been endorsed on it by the Mukhtiarkar Sanghar. The above-said Sale Deed is executed and it is still pending in the office of Sub-Registrar, District Sanghar vide Serial No.425 dated 12.04.2007 Exh.159. The registration of Sale deed has not been completed due to cancellation of Mutation entry and the present litigation / lis.
24. To negate that that Muhammad Hayat was grantee of land in the year 1980 and not as early in the year of 1963-64 as pleaded by

the Appellant and to refute and rebuke such Revenue Entry in the record of rights with regard to the grant of land in the year 1964 in favor of Major Mohammad Hayat and subsequent transfer in the year 1973 in favor Mohammad Shabbir and second transfer of land in the year 1988 in favor of Appellant are forged, the Respondent/ Defendant called DW-02 Mohammad Aslam Mukhtiarkar (Estate), District Sanghar who produced Ex.194 Form "A" and DW-04 Kamal Din produced T.O. Form No.40 in favor of Major Muhammad Hayat as per handwritten note on "A" Form Exh.194 and T.O. Form Exh.207 were issued on 13.03.2007 while certain Entries serial No.182 dated 19.09.1980 for Rs.1200/- and so on conti on same Form "A".

25. The DW 4 Kamaldin deposed that ***"As per my knowledge A-Form of the suit land was issued in favor of Major Mohammad Hayat in 1980/1981 by the Barrage Authorities."*** Interestingly, the grantee Major Mohamamd Hayat was passed away in 1973 as admitted by the DW-4 during cross-examination ***"As per information of M.Hanif Jat, Major Mohammad Hayat died in 1973"***. The Respondent /Defendant called DW-04 Kamaluddin son of Jaindo Khan. He is actual purchaser of land from legal heirs of grantee Major Muhammad Hayat through registered Attorney and he has also produced Exh.207 Forwarding letter dated 13.03.2007 issued by District Officer (Revenue & Estate) to the Mukhtiarkar Sanghar for issuance of Form "A". This document was produced by DW-04 Kamaluddin and he deposed: ***"As per my knowledge, A-Form of the suit land was issued in favor of Major Muhammad Hayat in 1980/1981 by the Barrage***

***Authorities. After 1980/81 khata of the suit land was mutated in favor of legal heirs of Major Muhammad Hayat.”***

26. The basic document of ownership/transfer of land from Government in favor of Major Mohammad Hayat is Exh.152 produced by Official witness. The presumption of truth is attached with it. This document Exh.152 was produced by official witness and was exhibited without objection of any party. In ***“Gulzar Hussain Versus Abdur Rehman and another” (1985 SCMR 301)***, the Supreme Court of Pakistan held that:

“the respondents were not entitled to raise objection as to the proof of this document since they had not raised such objection at the time of document was exhibited on record. It is settled law that when a particular fact is deposed by a witness in his examination-in-chief and the same is not challenged in cross-examination, it amounts to admission on the part of the adverse party. In this regard, reliance placed on case titled, "Mst. NUR JEHAN BEGUM through Legal Heirs v. Syed MUJTABA ALI NAQVI" (1991 SCMR 2300).”

27. The Court witness PW-04 Muneer Ahmed, Official Tapedar has deposed and his evidence is firmed, trust worthy and genuine. is very important. He deposed: this

“I produced Entry No.266 from old record from Form No.VII Deh Sadrat which show date of Entry (sic) 16.04.1964, original owner/transferee Govt. to Muhammad Hayat s/o Fateh Sher full rupee from S.No. un-surveyed S.No.1 from it area 129.10 Acre and from 166 areas 22-0 Acres total area 151.10 Acres as Exh.152”..... “I also produced Entry No.96 from Form No.XV Deh Sadrat Tapo Jakhro in the name of Muhammad Hayat Fateh Sher full rupee Army Nos. 16.59, 16.60, 16.61, 16.62 area 64-0

Acres total which have been mutated on 18.08.1973 in the name of Muhammad Shabbir s/o Raj Khan ...”  
 ..... “Since 1988 till today entry in the name of Muhammad Hanif is not changed or cancelled and intact till today per our record. Mst. Marvi and Ghulam Sarwar have no concerned with the suit land.”

28. The Respondents legal heirs and their registered Attorney, the Respondent Haneef have controverted Exh.152 (grant or allotment of land in 1964) by producing TO Form issued in the year 2007. It is settled law when a document is exhibited without objection and no cross has made, the said document would deem to be admitted by such party. DW-2 Exh.193 (Mohammad Aslam) Mukhtiarkar Estate produced Exh.194 (Form “A”). Against this Form A, TO Form No.40 dated 13.04.2007 was issued in favor of Respondents being legal heirs of grantee Major Mohammad Hayat. The evidence of this official witness is silent about its date of issue, name or designation of issuing authority and the purpose. The evidence is also silent with regard to the payment of installments and its date of completion.
29. The DW-03 Ghulam Sarwar during his evidence admitted that the Appellant is in possession of suit property. He deposed ***“It is fact that I have not produced any land revenue receipt showing our cultivation possession of suit land. Vol. says that we are in possession of suit land but the plaintiff is not allowing us to cultivate the same. It is incorrect to suggest that plaintiff is in cultivating possession of suit land and he is paying land revenue etc to the government”***. On the other hand, the admission that the plaintiff is not allowing to cultivate the Respondent side coupled with the Dhal, Electricity bills produced

by the Appellant / Plaintiff established that the Appellant/Plaintiff is in possession of suit property.

30. There's no dispute between the parties that Major Mohammed Hayat was grantee of the land. However, both the Courts below have failed to determine when exactly Major Mohammed Hayat was granted the land in question. Similarly, it has not come on record that when the land was free from the restrictions of grant and who has paid such installments towards occupancy value/allotment price. The trial court through its judgment held that major Mohammed Hayat was grantee under defense quota through M.F.R.O., Hyderabad.
31. It has not come on record as how and in what manner "A" Form has been issued in favor of dead person by a Barrage Officer. It is not comprehended to a person of prudent mind that the land was allotted/granted under Army Quota to its officer who passed away in the year 1973 and a question arises that how and in what manners and on whose request the "A" Form was issued in favor of dead person? Or such rights shall automatically have devolved upon his legal heirs, if so why the legal heirs have kept silence for more than 26 years? And then in the year 2007 obtained Transfer of Ownership (TO) Form?
32. Before delving into the substantive question of law, it may be observed that while assuming jurisdiction under section 96 CPC, the Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for rehearing and re-appraisal of evidence both on questions of fact and law. The judgment of the Appellate Court must, therefore,

reflect its strenuous application of mind and record findings supported by reasons, on all the issues arising thereto together with the contentions put-forth and pressed by the parties for a fair decision of the appellate Court after careful consideration of issues, evidence adduced and documents produced by the parties and same must be recorded in its findings. The right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. It should be noted that the jurisdiction cannot be conferred or convey or delegate by mere acquiescence or the consent of parties or by any other means and it is purely essential aspiration of legislation.

**33.** In stark contrast, a right of Second Appeal is neither natural nor an inherent right attached to the litigation. The second appeal under section 100 CPC is not a statutory right. Being a substantive statutory right, it has to be regulated in accordance with the statutory law and ensuring full compliance with the conditions mentioned in the provision that creates it. The court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. In a second appeal, to the High Court, the court's jurisdiction is generally limited to substantive questions of law and the High Court cannot typically re-examine facts or interfere with the findings of facts whatever be given by the trial Court and lower Appellate Courts. A second appeal cannot be decided merely on equitable grounds unless a substantial question of law is involved and not otherwise no matter the judgment contains erroneous findings of fact.

**34.** the existence of a substantial question of law is a condition precedent for entertaining the second appeal and is a sine qua non



for the exercise of jurisdiction under the provisions of Section 100 CPC. Thus the General rule is, that High Court, in a second appeal, will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. There are judicial well recognized exceptions in Pakistani and Indian jurisdiction which have consistently been developed. The prime illustrations of exceptions are as under:

- i. When contrary to law
- ii. When substantial question of law
- iii. When perverse—substantial question of law
- iv. When courts below failed to deal with the question of facts, the High Court can look into while exercising power under section 103 CPC.

**35.** Contrary to law—the Supreme Court of Pakistan in case ***“Zafar Iqbal & others v. Naseer Ahmed & Others” (2022 SCMR 2006- Civil Appeal No.775 of 2015)*** has defined “contrary to law”.

The relevant portion is re-produced for the convenience:

“The decision of a court is, therefore, considered “contrary to law” when it is made by ignoring the relevant and duly proved facts, or by considering the irrelevant or not duly proved facts. The expressions “relevant evidence” and “admissible evidence” are often used interchangeably, in legal parlance, with “relevant facts” and “duly proved facts” respectively, and a decision is said to be “contrary to law” and is open to examination by the High Courts in second appeal when: (i) it is based no evidence, or (ii) it is based on irrelevant or inadmissible evidence, or (iii) it is based on non-reading or misreading of the relevant

and admissible evidence. A decision on an issue of fact that is based on correct reading of relevant and admissible evidence cannot be termed to be “contrary to law”; therefore, it is immune from scrutiny in second appeal. A High Court cannot, in such case, enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court, much less the concurrent findings of facts reached by the trial court as well as the first appellate court.

Emphasize supplied

36. Concept of Substantial question of law—the Supreme Court of Pakistan in case ***“Muslim Commercial Bank Limited v. Punjab Labour Appellate Tribunal through its Chairman” (Civil Petition No. 1866-L of 2023)*** highlighted the concept substantial question of law while deciding a Second Appeal. The relevant portion is reproduced hereunder:

“It is a well-settled exposition of law that procedural law initiates and guides the process and course of action through which the lawsuit progresses and the way in which court proceedings are undertaken. It also regulates and oversees the procedures employed. Substantive law, on the other hand, comprises statutory obligations relevant to the subject matter, declaring the applicable rights and obligations, and regulating the demeanor of an individual or government. Jeremy Bentham, an English philosopher, jurist, and social reformer, first coined the terms “substantive laws” and “adjective laws” (i.e. procedural laws) in his book *The Works of Jeremy Bentham* (1843), while describing the procedure and course taken for the execution of laws. He argued that in jurisprudence, both procedural and substantive laws must coexist, as neither can function independently.

Similarly, Thomas Holland, the British jurist, in his book, *The Elements of Jurisprudence* defined „substantive law“ as laws that determine how the legal system protects rights, while „adjective laws“ or „procedural laws“ are the laws which provide the methods for enforcing and protecting those rights. According to Salmond, as cited in *Introduction to Jurisprudence* (3rd ed. Reprint, 2011) by Dr. Avtar Singh & Dr. Harpreet Kaur, the law of procedure may be defined as that branch of law which governs the process of litigation. It is the law of actions, *jus quod ad actiones pertinet*, which includes all legal proceedings, whether civil or criminal. Salmond outlines the following distinctions between substantive law and procedural law: (i) Substantive law determines the conduct and relations C.P.No.1866-L/2023 -7- of the parties inter se in respect of the matter litigated, whereas the procedural law regulates the conduct and relations of Courts and litigants in respect of the litigation; (ii) Substantive law deals with the ends which the administration of justice contemplates while the procedural law deals with the means and instruments by which the ends of administration of justice are to be attained; (iii) The question as to what facts constitute a wrong is determined by substantive law, while what facts constitute proof of a wrong is a question of procedure; (iv) Substantive law defines the rights whereas the law of procedure defines the modes and conditions of the application of one to the other; and (v) Substantive law relates to the matter outside the Courts, whereas the procedural law regulates affairs inside the Courts [Ref: Judgment authored by one of us in the case of *Meeru Khan v. Mst. Naheed Aziz Siddiqui and others* (PLD 2023 SC 912)].”

*Emphasized added*

37. Perversity—a question of substantial law- the Supreme Court of India 3 has held that the question whether the lower court's finding

is perverse? it may come within the ambit of substantial question of law. The Supreme Court of India has defined the word 'perversity' in the case ***"Kulwant Kaur vs. Gurdial Singh Mann"***, [2001 (4) SCC 262] and ***Damodar Lal Vs. Sohan Devi and others reported in (2016) 3 SCC 78***, has held as under:

"8. "Perversity" has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse."

**38.** The substantive question of laws framed hereinabove go to the heart of the following points of determination which have expressly been ignored by both the court below and no findings have been given on these points:

1. When the final payments against grant of land have been paid and when deceased grantee had acquired proprietary rights of land in question?
2. Who has paid such payments on behalf of Major Mohammad Hayat when he was died in 1973?
3. Whether the Respondents legal heirs and their successor-in-interest are estopped to claim land by virtue of Compromise Decree passed in Suit No.83 of 1985?
4. What is the effect of Approval of Collector, District Sanghar to transfer the land and the letter issued by Pakistan Army in favor of the predecessor-in-interest of the Appellant?

**39.** The trial court has placed great reliance upon the ownership record of Major Mohammed Hayat, its subsequent transfer in favor of Mohammad Shabbir in the year 1973 and finally in favor

of the Appellant in the year 1988. Such entries have been produced by the appellant before the trial court during his evidence and it has also been supported by the official witness from the office of Mukhtiarkar Revenue and have been appreciated by the trial Court while granting decree in favor of the Appellant.

40. The trial Court had ignored the factum of restricted rights of the grantee Major Mohammad Hayat and have not discussed or give findings on this essential point. The provision of Section 15 of the Colonization Act, 1912 is very relevant. It implicitly suggests that an individual who procures land from the Government and has been accorded possession of said land by the decree of the Collector is regarded as a tenant of that land. This status of tenancy persists until the complete payment of the purchase price, including any accrued interest, is remitted. Furthermore, the purchaser must also fulfil the additional conditions enumerated in the statement of the conditions of sale disseminated by the Collector. This implies that the deceased, during his lifetime, was merely a grantee and had not yet acquired proprietary rights over the land in question. For the convenience, the provision of Section 19 of the Colonization Act, 1912 is re-produced hereunder:

**“Transfer of rights to be void.-** Except as provided in Section 17, none of the right or interest vested in a tenant by or under the Government Tenants (Punjab) Act, 1893, or this Act, shall, without the consent in writing of the Commissioner, or of such officer as he may be written order empower in this behalf, be transferred or charged by any sale, exchange, gift, will, mortgage or other private contract, other than a

sub-lease for not more than one year in the case of a tenant who has not acquired a right of occupancy, and seven years in the case of a tenant who has acquired a right of occupancy, any such transfer or charge made without such consenting writing shall be void, and if (after the commencement of this Act) the transferee has possession, he shall be ejected under the order of the Collector:

Provided that the right of sub-letting conferred by this section shall not release any tenant from a condition requiring him to reside in the estate in which his tenancy is situated.

41. On the contrary, the Appellate court has set aside the impugned judgment and decree passed by the trial court on the ground that “A” form has been issued in favor of Major Mohammed Hayat in the year 1981 while the Transfer of ownership form was issued in the year 2007 in favor of legal heirs of deceased grantee who are respondents before me. According to the Appellate Court when the “A” Form issued in the year 1981 and Transfer of Ownership has issued in the year 2007, therefore, sale of land in the year 1973 and transfer of ownership in favor of Mohammad Shabbir in the year 1973 and subsequent transfer in favor of the Appellant by Mohammad Shabbir is illegal and forged. I am not in agreement with the findings of Appellate Court in view of the principles settled by the Honorable Supreme Court that the Grantee with restricted rights can enter into sale of the land or may transfer the land with the permission of Commissioner or authorized officer. Reliance can be placed on the case of **“Syed Hussain Naqvi and others v. Mst. Begum Zakara Chatha through LRs and others” (2015 SCMR 1081)** again it has been held as under;

.....14. In “**Abdul Jabbar v. Maqbool Jan**”, (2012 SCMR 947) this Court while relying upon the earlier case-law reported at “**Mst. Rehmat Bibi and others v. Mst. Jhando Bibi and others**”, (1992 SCMR 1510) and “**Abdul Jabbar v. Abdullah**”, (2006 SCMR 1541) has specifically held that “Section 19 of the Act bar “sale” and not to an agreement of sale.” In **Nasir Ali Shah v. Ahmad Yar** (2011 CLC 1566) the learned Lahore High Court in similar circumstances where vendor in prior agreement had undertaken to execute sale-deed in favor of plaintiff (prior purchaser) on grant of proprietary rights and had agreed to sell corpus of property to plaintiff, which would come into operation after grant of proprietary rights, has held that “according to terms of such prior agreement, plaintiff was carrying a risk to lose his money, if proprietary rights were not granted to vendor. According to such prior agreement, in case of failure of vendor to execute sale-deed after grant of proprietary rights, he was bound to pay to plaintiff amount specified therein in addition to earnest money already paid. Such prior agreement did not necessitate obtaining of prior permission under Section 19 of Colonization of Government Lands (Punjab) Act; 1912.” Same was the view of the learned Lahore High Court in **Muhammad Aslam v. Muhammad Anwar** (2006 YLR 2607) and **Muhammad Aslam v. Ghulam Aslam** (2002 MLD 1860) that such an agreement to sell did not fall within the mischief of section 19 of the Colonization of Government Lands (Punjab Act), 1912 and that Provisions of section 19 of the said Act do not debar vendors to execute agreement to sell with vendees.”

Line supplied

42. Similar view has taken in the case of ***“Daulat Ali through Legal Heirs and 2 others v. Ahmad through Legal Heirs and 2 others” (PLD 2000 SC 792)*** it has been held as under:

“6. .... Indeed the document entered into between the parties was merely an agreement to sell, specific performance whereof was postponed till such time the allottee had acquired full ownership rights. Such a reservation was made in the document itself which reflected the awareness of the constraints, the recognition of its legal effect and an effort on the part of the parties to the contract to keep themselves well within confines of law and to act strictly in consonance with the requirements of the statute. We are of the considered view that such an agreement to sell cannot be held to be violative of either the express provisions of section 19 of Act, 1912 or of the public policy behind such statutory provision. There have been a number of cases in which even oral agreement of sale by vendor in favour of vendee was held to be not hit by the provisions of section 19 of Act, 1912. This Court has already settled the law on the subject in the cases reported as ***“Hakim Ali v. Atta Muhammad” (1981 SCMR 993)***, ***“Muhammad Iqbal v. Muhammad Hussain” (PLD 1986 SC 70)***, ***“Rehmat Bibi v. Jhando Bibi” (1992 SCMR 1510)***, ***“Sher Muhammad Khan v. Ilam Din” (1994 SCMR 470)*** and ***“Abdul Ghani v. Fatima Bibi” (1994 SCMR 1786.)”***

43. Similar view has taken by in the case of ***“Hakim Ali and another v. Atta Muhammad and another” (1981 SCMR 993)***, while examining the express words of Section 19 of the Act that whether any such agreement entered into by the parties had the



effect of transferring or changing by sale any right or interest vested in a tenant under the Act and held:

“The sale itself and the performance of the agreement to sell was delayed to a time after the grantees had acquired proprietary rights and it did not in praesenti transfer or have the effect of charging or encumbering the rights or interest of the tenants as such”.

It was further held that:

“on the facts of the case we are clear that the document was merely an agreement to sell, the specific performance of which was postponed to a date when the grantees had acquired the proprietary rights. Such a reservation in the deed itself showed the awareness of the prohibition, the recognition of its legal effect and an effort on the part of the contracting parties to keep themselves well within the confines of the law and to act in accordance with the requirements of the law. Such an agreement to sell cannot be said to be violative of either the express provisions of section 19 of the Act or of the public policy behind such a statutory provision”

- 44.** The determination of the exact date of grant or acquiring proprietary rights in favor of Major Mohammed Ayas Hayat is important to justify the ownership and the validity and lawfulness of subsequent transfers in favor of Mohammad Shabbir in year 1973 and thereafter in favor of the Appellant in the year 1988 by way of entries in the record of rights as has been claimed by the appellant before me. In case, the land has validly been transferred in favor of Muhammad Shabbir in the year 1973 one of the two pre-requisite conditions ought to be fulfilled either the payments have completely paid and the grantee has acquired proprietary

rights or alternatively an approval of Commissioner or his authorized Officer must be obtained for pre-mature transfer of land. The provision of Section 19 of the Colonization Act, 1912 places an embargo on the transfer of land in respect of restricted grant until the payment of full and final outstanding amount on account of cost of land/occupation value /allotment price.

**45.** In my opinion, this point is not important in the present case for the simple reason that in the year 1985 the legal heirs who are respondents before me, have entered into compromise and a Decree was passed in favor predecessor-in-interest of the appellant. Consequently, the legal heirs have estopped to challenge the ownership of Appellant or his predecessor-in-interest on the basis of Transfer of Ownership Form which was issued in the year 2007. The issuance of Transfer of Ownership Form is the violation of Decree granted in the year 1985. Therefore, it is not important that Major Mohammed Hayat has allotted land in the year 1964 or in the year 1981. The most crucial point in this case is the date of final payments of installment against the occupancy value or price for the allotment or grant of land and acquiring of proprietary rights in question as section 19 of the Colonization Act, 1912 strictly prohibit the transfer of grantee's land during the pendency of payments and unless the payments in respect of the occupancy price or the price of allotment or grant has not finally been paid, the status of the grantee remains as tenant and not as an owner. Therefore, such grantee is not competent to transfer the land.

**46.** In the present case, both the Court below have ignored this fact that unless the payment has been made, the appellant cannot

claim themselves as owner. Therefore, the cutoff line for the Appellant is the day on which the final payments towards price of allotment or grant / occupancy value of land have been paid and that must be before the date of decree in order to justify that the appellant is rightful owner of the land and the Respondents legal heirs are barred to claim ownership by virtue of aforesaid Compromise Decree passed in the year 1985 and thus the TO Form issued in the year 2007 would become abundant. Conversely, in case the payments have been made after the passing of Decree in the year 1985, such Decree would become redundant in view of the provision of section 19 which strictly prohibit the transfer of land with restricted rights and only recourse to pay complete outstanding against land in order to obtain proprietary rights.

47. There's nothing available on record that who has paid the installment amounts and when exactly the payments in respect of the land towards its occupancy or grant or allotment price have finally been paid and the proprietary rights have been accrued to Major Mohammad Hayat.
48. Another important aspect in this case is that there is evidence that in 1963, an Entry No. 261 on Form VII-A Old was kept with approval of the Deputy Commissioner Sangher. The language of said provision of Section 19 of the Colonization Act, 1912 provides that the lands with restricted grants cannot be transferred unless payment is made in full and final and once the payment is finally paid, a TO Form is issued in favor of the Grantee which is acknowledgment of proprietary rights of the land. There is only one exception for pre-mature transfer of land.

Any grant can prematurely be transferred subject to the approval of Commissioner or collector. Although the PW- 4 Exh.151 during cross-examination deposed ***“It is correct that entry No. 261 of A form VII Old was kept by the order of Deputy Commissioner, Sangar Void this office letter No.1717 Dated 09.03.1963.”*** This letter has not been produced and both the appellant and respondent have failed to clarify this point and to bring on record the veracity of such letter to justify that the transfer in the record of rights in the year 1973 (in favor of Mohammad Shabbir) or in the year 1988 (in favor of the Appellant) are valid. The availability of such letter can conveniently wriggle out the Appellant from the embargo of section 19 of the Colonization Act, 1912 which provides that a restricted grantee can transfer the property with the approval of the Commissioner or other officer.

- 49.** Similarly, the appellant has produced Exhibit 112, a letter dated 12 May 2000 issued by the Commanding Officer of the Pakistan Army, whereby no objection has been given for the agriculture loan in favor of the Appellant. However, there's nothing on record that this letter has issued in pursuance to some earlier letter whereby the land was transferred in favor of the predecessor in interest of the appellant or on some approval or no objection of the Pakistan Army or any other valid connection or relationship in the context of which Exhibit 112 was issued as Major Muhammad Hayat was granted the land in question under defence quota. The contents of said letter is re-produced hereunder:

“Subject: Issue of HOC for Agriculture Loan

1. Muhammad Hanif S/O Lal Khan purchased the land from Major Muhammad Hayat comprising block no 59,61,60 & 62 total 64-00 Acres Chak No 46 Taluka

and District Sanghar from defence quota. The transferree has applied to this office for NOC for agricultural loan.

This office has 'NO OBJECTION' if loan is sanctioned to above named allottees by mortgaging of 75% of his land into the bank vide ADB of Pakistan Islamabad Circular No G.C/18/79/1621 dated 21 May 1983. The land can be sold by the bank in case of default."

50. Finding of Fact—non-consideration of evidence- The general rule is that the High Court shall only entertain matters involving a substantial question of law but Section 103 Civil Procedure Code, 1908 serves a supplementary to this. This particular section talks of two situations when a question of fact can be dealt with by the court in a second appeal. First, where neither the Lower Court nor the Court of First Instance has decided the necessary question. Secondly, where the essential issue has been mistakenly settled by the Courts on a substantial question of law and could reasonably be the focus of a second appeal under Section 100.
51. The ratio decidende of various Judgments of Pakistani and Indian jurisdiction held that the provision of section 103 Civil Procedure Code, 1908 rescue in the case where the courts below have ignored material evidence or acted on no evidence or the courts have drawn wrong inferences from proved facts by applying the law erroneously or the courts have wrongly cast the burden of proof or that the finding of facts have not considered facts and admissible evidence.

52. A Three-Judge Bench of Supreme Court of India (***“Balasubramanian v. M. Arockiasamy”***, (2021 SCC 655)<sup>1</sup> upheld the judgment of the Madras High Court passed in a second appeal whereby a High Court had reversed the order of the first appellate court granting injunction in favor of the Appellant–plaintiff in a property dispute. The contentions of the appellant regarding propriety of High Court’s exercise of jurisdiction in second appeal under Section 100 CPC was rejected while holding that:

***“[M]erely because the High Court refers to certain factu “[M]erely because the High Court refers to certain factual aspects in the case to raise and conclude on the question of law, the same does not mean that the factual aspect and evidence has been re-appreciated.”***

53. The Court observed that question of law for consideration will not arise in abstract but in all cases will emerge from the facts peculiar to that case and there cannot be a strait jacket formula. Similarly, the Supreme Court of Indian in case ***“Jagdish Singh v. Natthu Singh [AIR 1992 SC 1604, 1991 SCR Supl. (2) 567.]”*** laid down that

***"if the court is satisfied that the finding of fact by the lower court was vitiated due to non-consideration of relevant evidence or consideration of evidence which had no ulterior impact on the findings i.e. the finding of the fact had been rendered perverse, then the appellate court has to jurisdiction to deliberate upon the findings of the facts."***

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<sup>1</sup> <https://www.scconline.com/blog/post/2021/09/04/section-100-cpc/>

- 54.** Therefore, both the Courts below have erroneously given findings while ignoring the main question of determination as highlighted at paragraph 31 hereinabove. Both the Courts below have also not understood the spirit of Section 19 of the Colonization Act, 1912 as interpreted by the Hon'ble Supreme Court of Pakistan. Furthermore, the documents misconstrued by wrongly applied provision of law and both Court have completely ignored the Compromise Decree arrived at between the parties and its importance and magnitude and failed to record reasons thereof.
- 55.** Consequently, the Judgment dated 26.11.2014 passed by the 2<sup>nd</sup> Additional District Judge, Sanghar in Civil Appeal No.04 of 2013 is set aside and matter is remanded to the trial Court with directions to decide the matter in the light of question of determination at paragraphs 31 & 38. It may be observed that the trial Court will be at liberty to call any witness if it deem necessary for the determination of controversy and to resolve the dispute between the parties.
- 56.** The Second Appeal is disposed of in above terms.

**JUDGE**